

OFFICE AFFORDABLE HOUSING PRODUCTION PROGRAM

An Ordinance of the

City and County of San Francisco

Effective August 18, 1985

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[Office Affordable Housing Production Program]

AMENDING PART II, CHAPTER II OF THE SAN FRANCISCO MUNICIPAL CODE (CITY PLANNING CODE) BY ADDING SECTION 313 TO IMPOSE CONDITIONS ON APPROVAL OF PERMIT APPLICATIONS FOR OFFICE DEVELOPMENT PROJECTS REQUIRING CONSTRUCTION OF HOUSING A PORTION OF WHICH IS TO BE AND REMAIN AFFORDABLE TO LOW AND MODERATE INCOME HOUSEHOLDS, OR PAYMENT OF A FEE TO BE USED FOR THE DEVELOPMENT OF SUCH HOUSING, AND AMENDING PART II, CHAPTER XIII OF THE SAN FRANCISCO MUNICIPAL CODE (SUBDIVISION CODE) BY ADDING SUBSECTION 5 TO SECTION 1360.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Amending Part II, Chapter XIII of the San Francisco Municipal Code (Subdivision Code), by adding Subsection 5 to Section 1360 thereto, to read as follows:

Sec. 1360. Check Prints.

(a) Prior to filing of the Final Map or Parcel Map, the subdivider's engineer shall submit to the City Engineer:

- (1) Prints of the Final Map sheets or the Parcel Map sheets;
- (2) A preliminary title report;
- (3) Traverse sheets, showing the mathematical closure of the exterior boundaries around the subdivision, of each lot boundary in the subdivision, and of boundaries of easements and of dedicated rights-of-way;
- (4) The Preliminary Soil Report, unless it has been waived; and
- (5) If the subdivision is subject to City Planning Code Section 313, certification from the Director of City Planning or his or her designee that the subdivider has complied with the requirements of City Planning Code Section 313(i).

Section 2. Amending Part II, Chapter II of the San Francisco Municipal Code (City Planning Code) by adding Section 313 thereto, to read as follows:

Section 313. Housing Requirements for Office Development Projects.

(a) Definitions. The following definitions shall govern interpretation of this Section:

(1) "Affordable unit" shall mean a designated unit which is sold or rented to a household of low or moderate income.

(2) "Annual net income" shall mean net income as defined in California Administrative Code Section 6916.

(3) "Base price" shall mean 2.5 times the median income for a family of four persons for the County of San Francisco as set forth in California Administrative Code Section 6932 on the date on which a housing unit is sold.

(4) "Base rent" shall mean 30% of the median income for the County of San Francisco as set forth in California Administrative Code Section 6932 for a family of a size equivalent to the number of persons residing in a household renting a designated unit.

(5) "Community apartment" shall be as defined in San Francisco Subdivision Code Section 1308(b).

(6) "Condominium" shall be as defined in California Civil Code Section 783.

(7) "Construction of housing by a sponsor" shall mean construction of housing units by an entity which includes the sponsor as a partner or joint venturer, provided that the sponsor has general liability for the obligations of such entity. Construction of housing shall include rehabilitation of substandard, deteriorated units which:

(A) Are unsafe, unsanitary, or a danger to the health, safety, or welfare of an occupant;

(B) Have a rehabilitation cost in excess of \$20,000 per unit; and

(C) Have been unoccupied continuously for three years prior to commencement of construction to rehabilitate the units, except for those units owned and operated by a government agency or a non-profit organization.

(8) "Designated unit" shall mean a housing unit identified and reported to the Director by the sponsor of an office development project subject to this Section as a unit that shall be affordable to households of low or moderate income for 20 years.

(9) "Director" shall mean the Director of City Planning or his or her designee, including other City agencies or departments.

(10) "First certificate of occupancy" shall mean either a temporary certificate of occupancy or a Certificate of Final Completion and Occupancy as defined in San Francisco Building Code Section 307, whichever is issued first.

(11) "Household" shall mean any person or persons who reside or intend to reside in the same housing unit.

(12) "Household of low income" shall mean a household composed of one or more persons with a combined annual net income for all adult members which does not exceed the qualifying limit for a lower income family of a size equivalent to the number of persons residing in such household, as set forth for the County of San Francisco in California Administrative Code Section 6932.

(13) "Household of moderate income" shall mean a household composed of one or more persons with a combined annual net income for all adult members which does not exceed the qualifying limit for a median income family of a size equivalent to the number of persons residing in such household, as set forth for the County of San Francisco in California Administrative Code Section 6932.

(14) "Housing unit" or "unit" shall mean a dwelling unit as defined in San Francisco Housing Code Section 203.4.

(15) "Interim Guidelines" shall mean the Office Housing Production Program Interim Guidelines adopted by the City Planning Commission on January 26, 1982, as amended.

(16) "Market value" shall mean the fair market value of a designated unit at the time such value is determined by the Director of Property.

(17) "Net addition of gross square feet of office space" shall mean gross floor area as defined in Planning Code Section 102.8 to be occupied by, or primarily serving, office use, less the gross floor area in any structure demolished or rehabilitated as part of the proposed office development project space used primarily and continuously for office use and not accessory to any use other than office use for five (5) years prior to Planning Commission approval of an office development project subject to this Section, or for the life of the structure demolished or rehabilitated, whichever is shorter.

(18) "Office development project" shall mean any new construction, addition, extension, conversion, or enlargement, or combination thereof, of an existing structure which includes any gross square feet of office space.

(19) "Office use" shall mean space within a structure or portion thereof intended or primarily suitable for occupancy by persons or entities which perform, provide for their own benefit, or provide to others at that location services including, but not limited to, the following: professional, banking, insurance, management, consulting, technical, sales, and design or the office functions of manufacturing and warehousing businesses, but excluding retail uses; repair; any business characterized by the physical transfer of tangible goods to customers on the premises; wholesale shipping, receiving and storage; and design showcases or any other space intended and primarily suitable for display of goods. This definition shall include all uses encompassed within the meaning of Planning Code Section 219.

(20) "Owned unit" shall mean a designated unit which is a condominium, stock cooperative, or community apartment.

(21) "Owner" shall mean the record owner of the fee or a vendee in possession.

(22) "Rental unit" shall mean a designated unit which is not a condominium, stock cooperative, or community apartment.

(23) "Retail use" shall mean space within any structure or portion thereof intended or primarily suitable for occupancy by persons or entities which supply commodities to customers on the premises including, but not limited to, stores, shops, restaurants, bars, eating and drinking businesses, and the uses defined in Planning Code Sections 218 and 220-225, and also including all space accessory to such retail use.

(24) "Sponsor" shall mean an applicant seeking approval for construction of an office development project subject to this Section, such applicants' successors and assigns, and/or any entity which controls or is under common control with such applicant.

(25) "Stock cooperative" shall be as defined in California Business and Professions Code Section 11003.2.

(26) "Superintendent" shall mean the Superintendent, Bureau of Building Inspection.

(b) Findings. The Board hereby finds and declares as follows:

Large scale office developments in the City and County of San Francisco (hereinafter "City") have attracted and continue to attract additional employees to the City, and there is a causal connection between such developments and the need for additional housing in the City, particularly housing affordable to households of low and moderate income. Office uses in the City are benefitted by the availability of housing for persons employed in such offices close to their place of employment. However, the supply of housing units in the City has not kept pace with the demand for housing created by these new employees. Due to this shortage of housing, employers will have difficulty in securing a labor force, and employees, unable to find decent and affordable housing, will be forced to commute long distances, having a negative impact on quality of life, limited energy resources, and already overcrowded highways and public transport.

There is a low vacancy rate for housing affordable to persons of low and moderate income. In part, this low vacancy rate is due to factors unrelated to large office development, such as high interest rates, high land costs in the City, immigration from abroad, demographic changes such as the reduction in the number of person per household, and personal, subjective choices by households that San Francisco is a desirable place to live. This low vacancy rate is also due in part to large office developments which have attracted and will continue to attract additional employees and residents to the City. Consequently, some of the employees attracted to these large office developments are competing with present residents for scarce, vacant affordable housing units in the City. Competition for housing generates the greatest pressure on the supply of housing affordable to households of low and moderate income. To the extent that prices and rents for housing affordable to households of low and moderate income remain below the level needed to attract new construction, the supply of these housing units will not be expanded. Furthermore, federal and state housing finance and subsidy programs are not sufficient by themselves to satisfy the low and moderate income housing requirements of the City.

The Residence Element of the San Francisco Master Plan calls for the provision of additional housing to accommodate the demands of new residents attracted here by expanding employment opportunity made available by growth of office use in the City. The City should impose requirements on developers of office projects designed to mitigate the adverse effects of the expanded employment facilitated by such projects. To that end, the City Planning Commission is authorized affirmatively to promote the policies of the Residence Element of the San Francisco Master Plan through the imposition of special housing development requirements. It is desirable to impose the cost of the increased burden of providing housing necessitated by such office development projects directly upon the sponsor of new development generating the need through a requirement that the sponsor construct housing or pay a fee to the City to subsidize housing development as a condition of the privilege of development and to assist the community in solving its housing problems.

The required housing exaction shall be based upon formulae derived in the report entitled The Economic Basis for an Office Housing Production Program in San

Francisco, prepared by Recht, Hausrath & Associates, dated July 19, 1984. The aforesaid report concludes that the cost to provide affordable housing to persons attracted to large office developments in the C-3 District is \$9.47 - \$10.47 per square foot. However, in recognition of the numerous assumptions which were made in the report and hence the potential inexactitude of the final calculation, the City has selected the conservative figure of \$5.34 per square foot as the cost for purposes of this ordinance.

(c) Application.

(1) This Section shall apply to office development projects proposing the net addition of 50,000 or more gross square feet of office space.

(2) This Section shall not apply to:

(A) Any development project other than an office development project, including that portion of an office development project consisting of a retail use;

(B) That portion of an office development project located on property owned by the United States or any of its agencies;

(C) That portion of an office development project located on property owned by the State of California or any of its agencies, with the exception of such property not used exclusively for a governmental or educational purpose;

(D) That portion of an office development project located on property under the jurisdiction of the San Francisco Redevelopment Agency or the Port of San Francisco where the application of this Section is prohibited by California or local law;

(E) Any office development project approved by the Planning Commission prior to the effective date of this Section that was not subject to the Interim Guidelines; or

(F) Any office development project approved by the Planning Commission prior to the effective date of this Section that was subject to the Interim Guidelines. If the action of the Planning Commission affecting such office development project is thereafter modified, superseded, vacated, or reversed by the Board of Permit Appeals, the Board of Supervisors, or by court action in a manner affecting the amount of housing required under the Interim Guidelines, the permit application on remand to the Planning Commission shall remain subject to the Interim Guidelines.

(d) Imposition of Housing Requirement.

(1) The City Planning Commission shall impose conditions on the approval of applications for office development projects covered by this Section in order to mitigate the impact on the availability of housing which will be caused by the employment facilitated by the proposed office development project. The conditions shall require that the applicant construct housing or pay an in lieu fee to the City Controller which shall thereafter be used exclusively for the development of housing affordable to households of low or moderate income. The amount of net addition of gross square feet of office space which the City anticipates is subject to this Section shall be set forth in any public notice and/or calendar item announcement of any Planning Commission hearing to review an office development project subject to this Section. The Planning Commission shall use a formula to compute the housing requirement for an office development project as follows:

Net addition gross sq. ft. office space X .000386 = Housing Units

(2) The final net addition of gross square feet of office space subject to this Section shall be determined by the Planning Commission and a housing requirement imposed according to the above formula and shall be set forth in the Planning Commission Resolution approving the office development project. The Director shall notify the Superintendent that an office development project is subject to this Section at the time the Planning Commission approves the office development project.

(3) In the event that the the Planning Commission takes action affecting any office development project subject to this Section and such action is thereafter modified, superseded, vacated, or reversed by the Board of Permit Appeals, the Board of Supervisors, or by court action, the permit application for such office development

project shall be remanded to the Planning Commission to determine whether the proposed project has been changed in a manner which affects the calculation of the amount of housing required under this section and, if so, the Planning Commission shall revise the housing requirement imposed on the permit application in compliance with this Section within 60 days of such remand and notify the sponsor in writing of such revision or that a revision is not required.

(4) The sponsor shall supply all information to the Planning Commission necessary to make a determination as to the applicability of this Section and the number of gross square feet of office space subject to this Section.

(5) Prior to the issuance by the Superintendent of the first certificate of occupancy for any office development project subject to this Section, the sponsor must notify the Director in writing of the manner in which it elects to provide the housing units required under Subsections (e), (f), or (g) below. In order to discharge its obligation under this Section, the sponsor of any office development project subject to this Section shall have the option of:

(A) Constructing housing units in the amount set forth in the above formula pursuant to Subsection (e) below;

(B) Paying an in lieu fee in the sum established by the formula set forth in Subsection (f) below; or

(C) Combining the above options pursuant to Subsection (g) below.

(e) Compliance Through Construction of Housing.

(1) If the sponsor elects to construct housing units itself or through participation in a joint venture or partnership to meet the requirements of this Section, 62 percent of those housing units constructed must be affordable to households of low or moderate income for 20 years.

(2) Prior to issuance by the Superintendent of the first certificate of occupancy for an office development project subject to this Section, the sponsor shall submit to the Director a written proposal for a housing development project. Where the sponsor intends to construct housing units through participation in a joint venture or partnership, the sponsor must further certify to the Director that the sponsor has made a binding commitment, enforceable by the sponsor's joint venturor(s) or partner(s), to contribute an amount to the joint venture or partnership equivalent to or greater than the amount of the in lieu fee that would otherwise be required under Subsection (f) and that the joint venture or partnership shall use such funds to develop the housing subject to this Section. The Director or the Planning Commission must determine pursuant to Part (4) of this Subsection that such housing development project complies with the requirements of this Section prior to the issuance by the Superintendent of the first certificate of occupancy for an office development project subject to this Section.

(3) Within 30 days after the sponsor has submitted a written housing development project plan to the Director, the Director shall notify the sponsor in writing of his or her initial determination as to whether the plan is in compliance with this Section and shall cause a public notice to be published in an official newspaper of general circulation stating that such housing development plan has been received and stating the Director's initial determination. Within 10 days after such written notification and published notice, the sponsor or any other person may request a hearing before the Planning Commission to contest such initial determination. If the Director receives no request for a hearing within such 10 day period, the determination of the Director shall become a final determination. Upon receipt of any timely request for hearing, the Director shall schedule a hearing before the Planning Commission within 30 days. The scope of the hearing shall be limited to the compliance of the housing development plan with this Section, and shall not include a challenge to the amount of the housing requirement imposed on the office development project by the Planning Commission. At the hearing, the Planning Commission may either make such revisions of the Director's initial determination as it may deem just, or confirm the Director's initial determination. The Planning Commission's determination shall then become a

final determination, and the Director shall provide written notice of the final determination to the sponsor and to any person who timely requested a hearing of the Director's determination. The Director shall also provide written notice to the Superintendent that the housing units to be constructed pursuant to such plan are subject to this Section.

(4) In making a determination as to whether a sponsor's housing development plan complies with this Section, the Director and the Planning Commission shall credit to the sponsor any excess Interim Guideline credits or excess credits which the sponsor elects to apply against its housing requirement. The remaining housing units required shall be subject to the requirements of Part (1) of this Subsection.

(5) The Superintendent shall provide notice in writing to the Director at least five (5) business days prior to issuance of the first certificate of occupancy for any office development project subject to this Section. If the Director notifies the Superintendent within the five (5) business days that the sponsor has not complied with the provisions of this Section, the Superintendent shall refuse any and all certificates of occupancy for the office development project. If the Director notifies the Superintendent that the sponsor has complied with this Section or fails to respond within five (5) business days, the Superintendent shall not disapprove a certificate of occupancy pursuant to this Section. Any failure of the Superintendent or the Director to give any notice under this Subsection shall not relieve a sponsor from compliance with this Section. Where a housing development plan has not been approved by the Director or the Planning Commission in compliance with this Section prior to the issuance by the Superintendent of the first certificate of occupancy for the office development project, the Director shall initiate lien proceedings against the office development project under Subsection (j) below.

(6) Within one year of the issuance of the first certificate of occupancy by the Superintendent for the office development project, the sponsor shall provide written certification to the Director that it has commenced construction of the housing units under this Subsection, and where the sponsor elects to construct housing through a joint venture or partnership, that the sponsor's monetary contribution to the joint venture or partnership has been paid in full or has been posted in an irrevocable letter of credit. This one-year period may be extended for a maximum of two (2) one-year periods where, based upon evidence submitted by the sponsor, the Director determines within one year of the issuance by the Superintendent of the first certificate of occupancy for the office development project, or within a one-year extension, that (1) there is good cause for an extension or an additional extension, (2) the failure to comply with the time limits of this Subsection is beyond the sponsor's immediate control, and (3) the sponsor has made a reasonable effort to comply with this Subsection. Upon the Director's final determination that a sponsor has failed to commence construction of such housing within said one year period and any extensions thereto, the Director shall initiate lien proceedings under Subsection (j) below. Where the Director initiates lien proceedings for a violation of this Subsection, the amount of the lien set forth in Subsection (j)(1) shall bear interest at 10% per annum commencing on the date of issuance by the Superintendent of the first certificate of occupancy for the office development project.

(7) Within 30 days after the issuance by the Superintendent of any site or building permit to construct any housing units in a housing development project plan submitted to the Director under this Subsection, the sponsor shall identify the designated units by written notice to the Director, including:

(A) The commitment that such housing units will be affordable for rent or sale to households of low or moderate income for 20 years; and

(B) A statement of whether each designated unit is an owned unit or a rental unit.

Within 30 days after the sponsor's identification of designated units, the Director shall notify the City Engineer in writing identifying the intended owned units

and request the Director of Property in writing to appraise the fair market value of each designated unit which is intended to be an owned unit. Within 60 days of receipt of written notice from the Director, the Director of Property shall appraise the fair market value of each such designated unit as of the date of the appraisal applying accepted valuation methods and deliver a written appraisal of each such designated unit to the Director and the sponsor.

(8) The sponsor shall supply all information to the Director and the Director of Property necessary to make determinations under this Subsection, including all plans and specifications for each designated unit.

(9) Within three (3) months of the effective date of this Section, the Director is hereby directed to prepare and publish written guidelines by which compliance with this Subsection shall be determined.

(f) Compliance Through Payment of In Lieu Fee.

(1) The amount of the fee which may be paid by the sponsor of an office development project in lieu of developing and providing the housing required by Subsection (e) shall be computed as follows:

Net addition gross sq. ft. off. space X \$5.34 = Total Fee

Such in lieu fee shall be revised effective January 1 of each year, commencing on January 1 following the effective date of this Section, by the percentage increase or decrease of the Building Cost Index of the Cost Indices for Twenty Cities published by McGraw-Hill, Inc. or its successor since January 1 of the previous year.

(2) In making a determination as to the amount of the fee to be paid, the Director shall credit to the sponsor any excess Interim Guideline credits or excess credits which the sponsor elects to apply against its housing requirement.

(3) Upon payment of the fee in full to the Controller and upon request of the sponsor, the Controller shall issue a certification that the fee has been paid. The sponsor shall present such certification to the Director prior to the issuance by the Superintendent of the first certificate of occupancy for the office development project. The Superintendant shall provide notice in writing to the Director at least five (5) business days prior to issuing the first certificate of occupancy for any office development project subject to this Section. If the Director notifies the Superintendent within such time that the sponsor has not complied with the provisions of this Section, the Superintendent shall deny any and all certificates of occupancy. If the Director notifies the Superintendent that the sponsor has complied with this Section or fails to respond within five (5) business days, a certificate of occupancy shall not be disapproved pursuant to this Section. Any failure of the Superintendent or the Director to give any notice under this Subsection shall not relieve a sponsor from compliance with this Section. Where a sponsor fails for any reason to pay the in lieu fee to the Controller in compliance with this Section prior to the Superintendent's issuance of the first certificate of occupancy for the office development project, the Director shall initiate lien proceedings against the office development project under Subsection (j) below.

(g) Compliance Through Combination of Construction or Payment of In Lieu Fee.

The sponsor of an office development project may elect to satisfy its housing requirement by providing a partial number of the units required under Subsections (d) and (e) above and satisfying the balance of its requirement by paying an in lieu fee in the amount of \$13,834.20 per unit remaining. The housing units constructed must conform to all requirements of this Section, including, but not limited to, the proportion that must be affordable to households of low or moderate income as set forth in Subsection (e) above. Such in lieu fee per unit shall be revised effective January 1 of each year concurrently with the revision of the in lieu fee in Subsection (f). A sponsor who satisfies part of a housing requirement by applying excess credits or excess Interim Guideline credits pursuant to Subsection (h) below may satisfy all or part of the balance of the housing requirement by paying an in lieu fee per unit as computed in this Subsection or by developing housing pursuant to Subsection (e). In such case, all of the

requirements of Subsections (e) or (f) shall apply including the requirements with respect to the timing of development of housing or payment of the in lieu fee.

(h) Transfer of Housing Credits.

(1) In determining whether a housing development plan submitted or the amount of an in lieu fee paid by a sponsor is in compliance with this Section, the Director or the Planning Commission shall credit against all or part of a housing unit requirement for any sponsor of any office development project, credits, which shall be denominated "excess Interim Guidelines credits," obtained by the sponsor which:

(A) Have received final approval under the Interim Guidelines at the effective date of this Section, but which have not been applied to an office development project because the office development project has not been approved by the Planning Commission or which are in excess of those credits required to satisfy the housing requirement under the Interim Guidelines; or

(B) Have received preliminary approval prior to the effective date of this Section, receive final approval within six (6) months of the effective date of this Section, and are in excess of those credits required to satisfy the housing requirement under the Interim Guidelines or this Section. This six-month period may be extended for a maximum of two (2) six-month periods where, based upon evidence submitted by the sponsor, the Director or Planning Commission determine within six months of the effective date of this Section, or within a six-month extension, that (1) there is good cause for an extension or an additional extension, (2) the failure to obtain final approval of credits is beyond the sponsor's immediate control, and (3) the sponsor has made a reasonable effort to obtain final approval of credits.

Excess Interim Guideline credits may be applied against a sponsor's housing requirement under this Section on the basis of two and three tenths (2.3) excess Interim Guideline credits against one (1) housing unit required to be provided under this Section.

(2) In making their determination of the number of housing units required under Subsections (e) and (f) above, the Director or the Planning Commission shall credit to the sponsor any housing units constructed or in lieu fee paid in excess of that required to satisfy the housing unit requirement under this Section, which shall be denominated "excess credits." The Director or the Planning Commission shall permit the transfer of any excess credits received under this Section to be applied to satisfy all or part of a housing unit requirement for any other office development project that is subject to the provisions of this Section. Each excess credit shall be equivalent to one housing unit as computed under Subsection (d) above. Excess credits may be obtained only under Subsection (l) below or if:

(A) They have been obtained after the commencement of construction of housing under Subsection (e) above, commencement of construction of housing and the payment or irrevocable commitment of a sum to a joint venture or partnership under Subsection (e) above, or payment of an in lieu fee to the Controller under Subsection (f) above, or a combination of the above under Subsection (g) above; and

(B) The excess credits result from either:

(i) Abandonment of the office development project that received approval by the Planning Commission as evidenced by cancellation of the site or building permit or the site or building permit application; or

(ii) A decrease in the net addition of gross square feet of office space as a result of Planning Commission, Board of Permit Appeals, Board of Supervisors, or court action taken after:

a) The amount of such net addition of gross square feet has been determined by the Planning Commission under Subsection (d); and

b) The sponsor has commenced construction of housing under Subsection (e) above, construction has commenced and the sponsor has paid or irrevocably committed a sum to a joint venture or partnership under Subsection (e) above, paid an in lieu fee under Subsection (f) above, or a combination of the above under Subsection (g).

(3) If the number of excess credits or excess Interim Guidelines credits held by a sponsor is not sufficient to satisfy the entire housing unit requirement of that sponsor's office development project subject to the provisions of this Section, then the balance of the housing unit requirement shall be satisfied in accordance with the provisions of this Section, including the requirement set forth in Subsections (e) and (g) that a percentage of the units constructed must be affordable to households of low or moderate income.

(4) Excess credits and excess Interim Guideline credits may be transferred from one sponsor to another only if:

(A) The Director has been notified in writing of the proposed transfer of the credits;

(B) The Director has determined that the transferor sponsor has obtained the credits through meeting the requirements of either Part (1) or (2) of this Subsection; and

(C) The transfer is made in writing, a true copy of which is provided to the Director.

(5) The City makes no warranties that any excess credits or excess Interim Guidelines credits will be marketable during the period in which this Section is in effect or thereafter. The City makes no warranties that an applicant possessing excess credits or excess Interim Guidelines credits is entitled to Planning Commission approval of an office development project subject to this Section.

(i) Enforcement of Restriction on Housing Units Affordable to Households of Low or Moderate Income.

(1) Prior to the filing by the City Engineer of a final subdivision map or parcel map for a designated unit which is intended to be an owned unit, the sponsor shall execute and deliver to the Director for each such unit a promissory note payable to the City, secured by a deed of trust on the unit, and a grant to the City of a right of first refusal to purchase the unit, which documents shall comply with and recite the following restrictions:

(A) The promissory note shall be a non-interest note, due and payable at such time as the unit is sold. The note shall be cancelled 20 years from the date on which the first deed of trust is recorded for such unit. The amount of the promissory note shall be for \$13,834.20 plus the excess of the market value of such unit over the base price. The amount of \$13,834.20 shall be revised annually according to the formula in Subsection (g);

(B) The City shall be granted a right of first refusal to purchase the unit and any improvements therein for 20 years from the date on which the deed of trust is recorded for such unit. Such right shall be exercised within 60 days after the Director is notified in writing of the intended sale of such unit by the owner. The City may assign its right to purchase the unit to any person, including, but not limited to, a household of low or moderate income. The City's failure to exercise its right to purchase upon any sale of the unit shall not eliminate its right to purchase upon any future sale of the unit;

(C) If the unit is sold to a household other than a household of low or moderate income, the promissory note shall be due and payable to the City at the time of such sale. Upon payment of the full face amount of the promissory note, the unit shall no longer be deemed a designated unit subject to this Section;

(D) If the unit is to be sold to a household of low or moderate income as determined by the Director, the City will release the seller's note and right of first refusal and reconvey the deed of trust, in exchange for a new grant of right of first refusal from the purchaser and a promissory note from the purchaser payable to the City and secured by a deed of trust on the unit, all of which shall be in full satisfaction of the seller's obligations under the former note, deed of trust, and right of first refusal, and which shall comply with and recite the terms and conditions set forth in Parts (1)(B), (C), (D), (E), (F), and (G) of this Subsection and the following restrictions:

(i) The amount of the promissory note shall be the excess of the market value of such unit over the base price, plus simple interest at 4% per annum; and

(ii) The note shall be cancelled 20 years from the date on which the deed of trust was recorded for such unit under Part (2)(A) of this Subsection.

(E) Prior to the close of escrow of any sale of the unit to a household of low or moderate income, the seller shall provide the Director with a copy of the contract to purchase the unit, and the intended purchaser shall supply to the Director a certification identifying by full name and address each member of the purchaser's household, federal income tax returns for the previous two (2) years for each member of such household, and verification of employment and current salary for each employed member of such household. The Director shall make a determination as to whether the purchaser qualifies as a low or moderate income household and notify the seller and the purchaser of such determination within 10 days of receipt of all of the above information;

(F) If the Director, after close of escrow of the sale to a household of purported low and moderate income, determines that such household at the time of sale knowingly misrepresented or concealed facts in order to qualify as a household of low or moderate income, the promissory note delivered to the City by such household in escrow shall become immediately due and payable; and

(G) An owned unit may be rented only to a household of low or moderate income at the base rent. The violation of this restriction shall make the promissory note for such unit immediately due and payable.

(2) Within 30 days after the issuance by the Superintendent of a site or building permit to construct any designated unit which is a rental unit, the sponsor shall execute and deliver to the Director a promissory note payable to the City and a deed of trust with the City as sole beneficiary which documents shall comply with and recite the following restrictions:

(A) The promissory note shall be a non-interest note and shall be immediately due and payable at such time as any rental unit in the building or buildings covered by the deed of trust securing the note is rented to a household which is not of low or moderate income or rented at a monthly rate higher than one twelfth of the base rent. The note shall be cancelled 20 years from the date on which the deed of trust in favor of the City is recorded for such unit.

(B) The amount of the promissory note shall be \$13,834.20 times the number of designated units covered by the promissory note and deed of trust. The amount of \$13,834.20 shall be revised annually according to the formula in Subsection (g);

(C) The deed of trust shall be on the building or buildings in which the rental unit is located; provided, however, that there shall be no more than one deed of trust required on any single building in which there is more than one designated rental unit.

(D) In the event that an owner of any rental unit intends to convert the unit to an owned unit during the 20 year period in which such unit is subject to this Section; the owner shall provide written notice of such intention to convert to the Director and the Director of Property. Within 60 days of such notice:

(i) The Director shall provide written notice of the identity of the intended owned unit to the City Engineer; and

(ii) The Director of Property shall appraise the market value of the unit as of the date of the appraisal and deliver a written appraisal of the unit to the Director and the owner. The owner shall provide the Director of Property with all information necessary to render such appraisal.

Prior to the filing by the City Engineer of a final subdivision map or parcel map for the building in which the unit is located, the owner shall execute and deliver to the Director a promissory note, deed of trust, and grant of right of first refusal for the intended owned unit which comply with and recite the restrictions set forth in Part (1)

of this Subsection. At the time of recording of a final map or parcel map for the building in which the designated unit is located, the City shall release the former promissory note and reconvey the former deed of trust in exchange for a grant of a right of first refusal and a new promissory note secured by a deed of trust on each owned unit in such building. The new promissory note and right of first refusal shall have a term equivalent to the remainder of the 20 year period which commenced on the date on which the deed of trust for the unit is recorded pursuant to Part 2(A) of this Subsection.

(3) The base rent of a rental unit or of an owned unit, if it is rented, shall be increased or decreased according to any change in the median income for the County of San Francisco as set forth in California Administrative Code Section 6932 for a family of a size equivalent to the number of persons residing in the household renting the unit. The base rent shall be adjusted for such change on the date of the commencement of a tenancy of the unit and annually thereafter. The provisions of San Francisco Administrative Code Sections 37.1 - 37.14 (the Residential Rent Stabilization and Arbitration Ordinance) shall not apply to the rental of any designated unit.

(4) Each owner of a designated unit who occupies the unit shall report in writing to the Director no later than August 1 of each year stating the full name and address of each of the owners of the unit, the date of purchase and the purchase price, and the names and relationship of all persons permanently residing in said unit from July 1 of the previous year through June 30 of the current year.

(5) Prior to the rental of any designated unit, the prospective tenant shall provide the Director with a copy of any proposed written lease of the unit, a certification identifying by full name and address each member of the tenant's household, federal income tax returns for the previous two (2) years for each member of such household, and verification of employment and current salary for each employed member of such household. Each owner of a designated rental unit shall report in writing to the Director on August 1 of each year identifying the unit by address, the name of the tenant or tenants of the unit since July 1 of the previous year through June 30 of the current year, and the amount of total monthly rent paid by such tenants for each month of such 12 month period. Each tenant of a designated unit shall report in writing to the Director on August 1 of each year by identifying the unit by address, the full names and relationship of each of the persons residing in the unit since July 1 of the previous year through June 30 of the current year, the amount of total monthly rent paid by such tenants for each month of such 12 month period, and by providing to the Director federal income tax returns for the previous year for each member of such household.

(6) The sale of any designated unit prior to the sponsor's compliance with Parts (1) or (2) of this Subsection shall be a violation of this Section and shall constitute cause for the Director to initiate lien proceedings against the office development project pursuant to Subsection (j) in the sum of \$13,834.20, as revised annually, for each unit sold in violation of this Section.

(7) All funds paid to the City pursuant to promissory notes under this Subsection shall be deposited in the City Wide Affordable Housing Fund established in Subsection (m) below.

(8) Any person, including any owner, seller, purchaser, converter, landlord, or tenant of a designated unit who violates any of the requirements of this Subsection shall be guilty of a misdemeanor. Any person convicted of a misdemeanor hereunder shall be punishable by a fine of not more than \$1,000.00 or by imprisonment in the County jail for a period of not more than six (6) months, or by both. Each and every violation of this Subsection, as it pertains to each unit, shall constitute a separate offense.

(j) Lien Proceedings.

(1) A sponsor's failure to comply with the requirements of Subsections (e), (f), (g), and (i) shall constitute cause for the City to record a special assessment lien against the office development project in the sum of \$13,834.20 for each housing unit required

under this Section. The amount of the lien per unit shall be revised annually according to the formula in Subsection (g).

(2) The Director shall initiate proceedings to impose the special assessment lien by preparing a preliminary report notifying the sponsor of a special assessment hearing to confirm such report by the Board of Supervisors at least 10 days before the date of the hearing. The report to the sponsor shall contain the sponsor's name, a description of the sponsor's office development project, a description of the parcels of real property to be encumbered as set forth in the assessor's map books for the current year, a description of the alleged violation of this Section, and shall fix a time, date, and place for hearing. The Director shall cause this report to be mailed to each owner of record of the parcels of real property to be assessed.

(3) At the hearing fixed for consideration of the report, the Board of Supervisors shall hear the report with any objections of the owners of the parcels liable to be assessed. The Board of Supervisors may make such revisions, corrections, or modifications of the report as it may deem just. In the event that the Board of Supervisors is satisfied with the correctness of the report as submitted or as revised, corrected, or modified, it shall be confirmed as a final report. Any delinquent account may be removed from the report by payment in full at any time prior to confirmation of a final report. The Director shall cause the confirmed report to be verified in form sufficient to meet recording requirements.

(4) Upon confirmation of the report by the Board of Supervisors, the delinquent charges contained therein shall constitute a special assessment against the parcel or parcels used in the office development project. Each such assessment shall be subordinate to all existing special assessment liens previously imposed upon such parcels and paramount to all other liens except those for state, county, and municipal taxes with which it shall be upon parity. The lien shall continue until the assessment and all interest due and payable thereon are paid to the Tax Collector of the City. All laws applicable to the levy, collection, and enforcement of municipal taxes shall be applicable to said special assessment.

(5) The Director shall cause the confirmed and verified report to be recorded in the County Recorder's Office and the special assessment lien on each parcel of property described in said report shall carry additional charges for administrative expenses of \$50.00 or 10% of the amount of the unpaid balance, whichever is greater, plus interest at a rate of 1 1/2 per cent per full month compounded monthly from the date of the recordation of the lien on all charges due.

(6) The Director shall file a certified copy of each confirmed final report with the Controller and Tax Collector within 10 days after confirmation of the report, whereupon it shall be the duty of said officers to add the amount of said assessment to the next regular bill for taxes levied against said parcel or parcels of land for municipal purposes, and thereafter said amount shall be collected at the same time and in the same manner as City and County of San Francisco taxes are collected, and shall be subject to the same procedure under foreclosure and sale in case of delinquency as provided for property taxes of the City and County of San Francisco. Except for the release of lien recording fee authorized below, all sums collected by the Tax Collector pursuant to this Section shall be held in trust by the Treasurer and deposited in the City Wide Affordable Housing Fund established in Subsection (m) below.

(7) On payment to the Tax Collector of the special assessment, the Tax Collector shall cause to be recorded a release of lien with the County Recorder, and from the sum collected pursuant to Part (1) of this Subsection, shall pay to the county recorder a recording fee of \$6.00.

(8) Any notice required to be given to a sponsor or owner shall be sufficiently given or served upon the sponsor or owner for all purposes hereunder if personally served upon the sponsor or owner or if deposited, postage prepaid, in a post office letterbox addressed in the name of the sponsor or owner at the official address of the sponsor or owner maintained by the Tax Collector for the mailing of tax bills or, if no

such address is available, to the sponsor at the address of the office development project.

(k) In Lieu Fee Refund When Building Permit Expires Prior to Completion of Work and Commencement of Occupancy.

In the event a building permit expires prior to completion of the work on and commencement of occupancy of an office development project so that it will be necessary to obtain a new permit to carry out any development, the obligation to comply with this Section shall be cancelled, and any in lieu fee previously paid shall be refunded. If and when the sponsor applies for a new permit, the procedures set forth in this section regarding construction of housing or payment of the in lieu fee shall be followed.

(l) One Time Fee Payment. In the event that an office development project for which housing units have been constructed or an in lieu fee has been fully paid is demolished or converted to non-office use prior to the expiration of its estimated useful life, the City shall (1) grant to the sponsor excess credits transferrable under Subsection (h) for a portion of any housing units actually constructed, or refund to the sponsor a portion of the amount of an in lieu fee paid. The portion of excess credits granted or the fee refunded shall be determined on a pro-rata basis according to the ratio of the remaining useful life of the project at the time of demolition or conversion in relation to its total useful life. For purposes of this Section, the useful life of an office development project shall be 40 years.

(m) Affordable Housing Fund. There is hereby established as a separate fund set aside for a special purpose called the City Wide Affordable Housing Fund ("Fund"). All monies contributed pursuant to Subsections (f) or (g) or assessed pursuant to Subsection (j) shall be deposited in the Fund. All monies deposited in the Fund shall be used solely to increase the supply of housing affordable to households of low and moderate income. No portion of the Fund may be used, by way of loan or otherwise, to pay any administrative, general overhead, or similar expense of any entity. The Fund shall be administered by the Director, who shall have the authority to prescribe rules and regulations governing the Fund which are consistent with this Section.

(n) Annual Evaluation. Commencing one year after the effective date of this Section, the Director shall report to the Planning Commission, the Board of Supervisors, and the Mayor each year on the status of compliance with this Section and the efficacy of this Section in mitigating the City's shortage of affordable housing available to employees working in office development projects subject to this Section. Five years after the effective date of this Section, the Planning Commission shall review the formula set forth in Subsection (d). In such report, the Director shall recommend any changes in the forecasts and other assumptions contained in the Recht, Hausrath & Associates Report dated July 19, 1984 referred to in Subsection (b) with respect to demand for or supply of housing in the City which would warrant modification of such formula should the Board of Supervisors extend the duration of this Section beyond five years.

(o) Partial Invalidity and Severability. If any provision of this Section, or its application to any office development project or to any geographical area of the City, is held invalid, the remainder of the Section, or the application of such provision to other office development projects or to any other geographical areas of the City, shall not be affected thereby.

Section 3. The Board hereby finds that the shortage of housing which the City and County of San Francisco is currently experiencing can be reasonably anticipated to continue for the foreseeable future. However, in view of the fact that those problems may change, so as to no longer require the provisions of this ordinance or so as to require different legislative solutions, this ordinance shall terminate five years from its effective date unless the Board by legislative action extends the duration of the ordinance.

Finally Passed, Board of Supervisors, July 8, 1985; Approved by the Mayor July 19, 1985



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